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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 936

ALFRED STARR, ET AL., *Appellants*,

v.

NASHVILLE HOUSING AUTHORITY, ET AL., *Appellees*.

On Appeal From the United States District Court for the Middle District of Tennessee

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court for the Middle District of Tennessee, Nashville Division, entered on December 26, 1956, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of of the appeal and that substantial questions are presented.

OPINION BELOW

The District Court delivered no written opinion but made findings of fact and conclusions of law which are reported in 145 F. Supp. 498. Copies of the findings of fact, conclusions of law, and judgment are attached hereto as Appendix A.

JURISDICTION

This suit was brought under 28 U.S.C. 1331, 2201, and 2202 (1) to enjoin the appellees from instituting condemnation proceedings to take appellants' property for redevelopment purposes pursuant to the Tennessee Housing Authorities Law (Tennessee Code, Secs. 13-801 et seq.), on the ground that said Tennessee Housing Authorities Law is unconstitutional and void as sought to be applied with respect to appellants' property in the performance of a contract of September 26, 1952, between the Nashville Housing Authority and the Housing and Home Finance Agency;

(2) to secure an adjudication that said contract of September 26, 1952, is not authorized by the Housing Act of 1949, 63 Stat. 413, 42 U.S.C. 1441 et seq., and specifically by Title I thereof relating to slum clearance, 63 Stat. 414, 42 U.S.C. 1451 et seq., and that said contract is illegal and void to the extent that it relates to or affects appellants' property; and

(3) that the City of Nashville be permanently enjoined from furnishing City funds for aiding, directly or indirectly, the redevelopment project envisaged by said contract of September 26, 1952, to the extent that said project relates to or affects appellants' property. The judgment of the District Court was entered on December 26, 1956, and notice of appeal was filed in

that court on February 25, 1957. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. 1253. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Herkness* v. *Irion*, 278 U.S. 92, 73 L. ed. 198; *Interstate Busses Corp.* v. *Blodgett*, 276 U.S. 245, 72 L. ed. 551; Cf. *Berman* v. *Parker*, 348 U.S. 26, 99 L. ed. 27; *Oklahoma Gas & E. Co.* v. *Oklahoma Packing Co.*, 292 U.S. 386, 390-91, 78 L. ed. 1318, 1321-22.

STATUTES INVOLVED

The pertinent portions of the Tenth and Fourteenth Amendments, of the Housing Act of 1949, 63 Stat. 413, 42 U.S.C. 1441 et seq., and of the Tennessee Housing Authorities Law, Tennessee Code, Secs. 13-801 et seq., are set forth in Appendix B hereto.

QUESTIONS PRESENTED

The following questions are presented by this appeal:

(1) Whether appellants' property, consisting of land and a theatre and office building located thereon, can be condemned consistently with Tennessee Housing Authorities Law (Tennessee Code, Sections 13-801 et seq.) and with the Fourteenth Amendment, for the purpose of carrying out a Redevelopment Plan adopted by Nashville Housing Authority, pursuant to which appellants' building (which is neither unsafe, unsightly or insanitary, but is a sound structure, properly maintained), will be razed and the land sold to third persons who may then, consistently with said Redevelopment Plan, erect a new building in the same location, with the same dimensions, design, and mate-

rials, and for the same uses, where the sole reason for taking appellants' property is that it is within the boundaries fixed by Nashville Housing Authority for the redevelopment area. It is the contention of appellants that under these circumstances, the taking of their property is unnecessary to carry out a public use for the reason that, aside from the fact that their property is located within the boundaries of the redevelopment area, its continued ownership by appellants and its continued use as a theatre and office building would not conflict with or be inconsistent with any provision of the Redevelopment Plan.

(2) Whether the condemnation of appellants' property, in the performance of a contract dated September 26, 1952, between Nashville Housing Authority and Housing and Home Finance Agency, violated Title I of the Federal Housing Act of 1949 (42 U.S.C., Section 1451 et seq.), for the reason that the business section in which said property is located was not, when the Redevelopment Plan was adopted April 29, 1952, a "slum area or a deteriorated or deteriorating area which is predominantly residential in character" within the meaning of section 110 of the Housing Act of 1949 (42 U.S.C. 1952 ed. 1460). The appellants contend that where, as here, a downtown business section was tacked on to a residential slum area, of which it was not an integral part, the statute is not complied with merely because the residential slum area was more extensive than the tacked-on business section and merely because the entire area, when viewed as a whole, was "predominantly residential in character."

(3) Whether the aforesaid contract between Nashville Housing Authority and Housing and Home Fi-

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nance Agency dated September 26, 1952, constitutes an unlawful delegation to the Housing and Home Finance Administrator of legislative authority in violation of the Tennessee statutes above referred to, or, if said Tennessee statutes do authorize said contract, whether said contract and statutes amount to an unlawful delegation of legislative power to a federal agency in violation of the Tenth Amendment of the Federal Constitution. It is the contention of appellants that legislative powers are vested in the Housing and Home Finance Administrator by said contract, and that the Tennessee statutes do not authorize such delegation of legislative power, but if construed to authorize same, that the Tenth Amendment forbids such delegation by a state to the federal government of legislative powers.

(4) Whether the District Court erred in the conclusion of law that the action of the appellees in including appellants' property in the Redevelopment Project was "not arbitrary, capricious or an abuse of discretion," in view of the Court's findings of fact, including the finding that a building almost directly across the street from appellants' property, and excluded from said project, "is not better maintained, is not more sound structurally, and is not more sanitary, safe or sightly, than the building of plaintiffs." The appellants contend that said conclusion of law is at variance with the findings of fact and the evidence.

STATEMENT OF THE CASE

Nashville Housing Authority ("N.H.A."), a Tennessee public corporation organized under Housing Authorities Law (Tennessee Code, Sections 13-801 et seq.), adopted on April 7, 1952, "Redevelopment Plan for the Capitol Hill Redevelopment Project," Nash-

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ville, Tennessee (Defendants' Exhibit 9), and on April 15, 1952, this Redevelopment Plan was approved by the City Council of the City of Nashville, after public hearing. On September 26, 1952, N.H.A. entered into a contract with the United States of America, acting by and through the Housing and Home Finance Administrator (Defendants' Exhibit 1), under which the Government agreed to provide funds by way of loans and grants to N.H.A. to carry out the "Project" described in the aforesaid Plan. The contract recited that it was made under authority of Title I of the Housing Act of 1949 (42 U.S.C. 1451 et seq.). The definition of "Project" (Housing Act of 1949, sec. 110(c)), relied upon as authority for the contract, was "(1) acquisition of (i) a slum area or a deteriorated or deteriorating area which is predominantly residential in character . . . "[1]

The "Project Area" here involved included a large section of residential slums north of the State Capitol grounds and west of Fifth Avenue in the City of Nashville. The area east of Fifth Avenue adjacent to the residential slum section above referred to, was predominantly commercial and industrial in character; and the city block in which appellants' property is located, bounded on the south by Charlotte Avenue, on the west by Fifth Avenue, on the north by Capitol Avenue, and on the east by Fourth Avenue, located on the periphery of the Project Area, was commercial in character, containing only one building classified by N.H.A. as residential. This is shown in a map designated Exhibit 2 to the Redevelopment Plan, with explanation given in the uncontradicted testimony of

[1] The "predominantly residential in character" qualification was subsequently eliminated from the statute. Housing Act of 1954, sec. 311. See p. 14, infra.

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the plaintiff, Alfred Starr (Tr. 80-82; see also Findings 1 and 2.) As the District Court found, appellants' property, known as the Bijou Theatre property, "is located in the downtown business section of Nashville." (Finding 1). Although some of the buildings in this city block were to some extent dilapidated, the appellants' property was and is "in excellent structural condition, having been well maintained over the years. It is not unsightly, unsafe or unsanitary." (Finding 5). This building is located on the west side of Fourth Avenue, about halfway between Charlotte and Capitol Avenues (Tr. 80) and includes offices as well as a theatre (Finding 1).

The Redevelopment Plan provided in general for the acquisition by N.H.A. of the fee simple title to all the property within the Project's boundaries, the razing of all buildings, and the resale of all the land (not including streets, alleys, and a proposed new boulevard) to new owners for new commercial enterprises. In Area A, in which appellants' property is located, "the only permitted use are office and professional buildings, retail and department stores, banks, theaters, restaurants, club houses, cultural and educational facilities, bus passenger facilities, telephone central stations, post offices, hotels and commercial apartment hotels, and other uses of a similar nature, as well as off-street parking and loading facilities (including parking garages, underground or within the buildings to which they are incidental)." (Defendants' Exhibit 9, p. 12). The Plan itself contains no requirements with respect to building construction (Finding 7).

There is nothing in the Redevelopment Plan with which the continued ownership by appellants of their

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property and its continued use as a theatre and office building would conflict in any way. Indeed, to the extent that any possible conflict in appearance might be involved, appellants, in 1953, offered to "expend whatever sums might be necessary to make [appellants'] building conform in appearance with other buildings to be constructed in the section of the redevelopment project area in which said Bijou Theatre was located." (Finding 10). Said offer, which remains in effect to date, has been given no consideration by appellees (Finding 10).

Nor was the symmetry of the Project Area a consideration in preparing the Redevelopment Plan. The Morris Memorial Building, an office building on the opposite side of Fourth Avenue from the appellants' Bijou Theatre building, was left out of the Project Area by drawing a line around it. Moreover, as found by the District Court, this building "is not better maintained, is not more sound structurally, and is not more sanitary, safe or sightly, than the buildings of [appellants]" (Finding 12).

The contract of September 26, 1952, between N.H.A. and the Housing and Home Finance Agency provides, among other things, that no land shall be sold or leased at prices or upon or subject to covenants, restrictions, terms, or conditions which have not been concurred in by the Housing and Home Finance Administrator. (Section 201(8) of Defendants' Exhibit 1; Finding 9).

Several owners of property in the city block in which appellants' property is located, together with two owners of property in the adjacent city block to the east, brought this action under 28 U.S.C. 1331,

2201, and 2202, to enjoin the appellees from taking plaintiffs' properties by eminent domain pursuant to the N.H.A. contract with the Housing and Home Finance Agency, on the ground of the invalidity of the Tennessee Housing Authorities Law as sought to be applied to plaintiffs' properties. Since there was also a contract between the N.H.A. and the City of Nashville, under which the City was to contribute to the cost of the Project, the City was also made a defendant. Prior to the final hearing, all the plaintiffs withdrew with the exception of the owners of the Bijou Theatre property, who are the appellants herein, and the H. G. Hill Realty Company, which owned property on the northeast corner of Charlotte Avenue and Fifth Avenue.

A three-judge court was duly convened, which heard the evidence, filed findings of fact and conclusions of law, and dismissed the complaint. The owners of the Bijou Theatre filed this appeal. Appellants do not question the findings of fact, but submit that these findings, and the undisputed evidence on issues not specifically covered in the findings, do not support the conclusions of law and the judgment.

THE QUESTIONS ARE SUBSTANTIAL

The district court rested its decision on *Berman* v. *Parker,* 348 U.S. 26, 99 L. ed. 27, in which this Court upheld the constitutionality of the District of Columbia redevelopment law. Appellants have no quarrel with that holding and, indeed, would concede the constitutionality of the Tennessee Housing Authorities Law as such. It is the manner in which appellees have sought to carry out that law which renders it unconstitutional.

The appellees have proceeded arbitrarily and capriciously to carry out the Nashville Redevelopment Plan in such a way as to deprive appellants of their constitutional rights. Appellees have included appellants' Bijou Theatre building in the Plan despite the facts that, as found by the district court, "The Bijou Theatre is in excellent structural condition, having been well maintained over the years," and "is not unsightly, unsafe, or unsanitary" (Finding 5), and despite appellants' undertaking to make their "building conform in appearance with other buildings to be constructed in the section of the redevelopment project area in which said Bijou Theatre was located." (Finding 10). Appellees have proceeded with their project in complete disregard of this undertaking and without giving any consideration thereto (Finding 10). Appellees have arbitrarily included the Bijou Theatre in their Plan, at the same time excluding therefrom a building across the street which, as the district court found, "is not better maintained, is not more sound structurally, and is not more sanitary, safe or sightly" than the Bijou (Finding 12). Appellees have illegally included the Bijou Theatre in their Plan despite the fact that, as the district court found, it "is located in the downtown business section of Nashville, in an area in which businesses conducted by Negroes predominate" (Finding 1) and despite the requirement of the federal Housing Act at the time the plan was adopted (1952) that project areas must be "predominantly residential in character." (Housing Act of 1949, sec. 110(c), 42 U.S.C. 1460(c), prior to its amendment by the Housing Act of 1954. Appellees have arbitrarily included appellants' building in the Redevelopment Plan for acquisition and sale to a redeveloper despite the fact that the Bijou Theatre building complies with

the "only permitted uses" which the Plan provides for the block in which the building is located, namely, "office and professional buildings, * * * stores, * * * theatres" etc. (Redevelopment Plan, p. 12) and that "No building requirements in the area are indicated in the Plan" (Finding 7). Appellees have proceeded to carry out their Plan despite the fact that it depends for its execution upon an unlawful and unconstitutional delegation of power by the Nashville Housing Authority to the federal Housing and Home Finance Agency under a contract whereby the Housing and Home Finance Administrator has final authority over "any changes in the basic elements of the Redevelopment Plan," over the prices at which or terms upon which any land in the project area shall be acquired, over the prices, terms and "restrictions" upon which land may be sold or leased, and over the institution of eminent domain proceedings (Finding 9).

For these reasons we submit the district court erred in not issuing the injunction sought there by appellants.

1. There is nothing in either the applicable state law or the applicable federal law to prevent N.H.A. from proceeding with the remainder of the Project, and at the same time permitting appellants to retain their property. The permitted land uses under the Plan include theatres and office buildings (Finding 7). There is nothing in the Plan with which the retention by appellants of their property and the continued use of the property for operating a theatre and an office building would conflict in any way.

The Plan does indicate that "restrictions" on land use may be imposed in the future, and it is conceivable

that something might be included in these subsequent restrictions with which the Bijou Theatre building would not comply. This seems unlikely, however. In this respect this case is similar to *Cincinnati* v. *Vester,* 281 U.S. 439, where the Court held that the City of Cincinnati could not condemn land for an undisclosed public use to be determined in the future. While this holding was based upon state law, it is clear from the Court's reasoning that if the state law had authorized condemnation for an undisclosed purpose, the law itself would have been invalid on constitutional grounds.

It is clear that the District Court in the instant case regarded the Redevelopment Plan as sufficient under state law. The conclusions of the court on the constitutional issues were apparently predicated on the view that *Berman* v. *Parker,* supra, made the principle of the *Vester* case inapplicable to redevelopment projects of the character here involved. We submit, however, that the *Vester* case is still good law and is applicable here. As stated by Mr. Justice Brandeis in *Thompson* v. *Consolidated Gas Co.,* 300 U.S. 55, 80:

> "... And this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid. See Hairston v. Danville & Western Ry. Co., 208 U.S. 598, 605, 606; Rindge Co. v. County of Los Angeles, 262 U.S. 700, 705. Compare Cincinnati v. Vester, 281 U.S. 439, 446, 449."

The "integrated plan" which this Court referred to in *Berman* (348 U.S. at 36) was one in which the "experts" have redesigned the "whole area so as to eliminate the conditions that cause slums—the overcrowding of dwellings, the lack of parks, the lack of adequate

streets and alleys, the absence of recreational areas, the lack of light and air, the presence of outmoded street patterns." (348 U.S. at 34). The question involved on the appeal in that case was the constitutionality of the District of Columbia Redevelopment Act—not whether the particular plan was of the type described. See the case below, *sub nom. Schneider* v. *District of Columbia,* 117 F. Supp. 705, 725.

In the instant case the Redevelopment Plan makes no provision for parks or recreational areas in the area in which appellants' property is located. Nor does the Plan make any change in street patterns in that area with the exception of a boulevard which does not touch appellants' property. No provision is made in the Plan to eliminate any "lack of light and air," if there was any such lack before. There is indeed no need for appellants' property to carry out the Plan, other than such need as might be said to arise from the mere fact that the property is within the artificially and arbitrarily drawn boundaries of the Project Area. The *Berman* holding is thus inapplicable except on the question of the constitutionality of the Tennessee statute authorizing slum clearance and urban redevelopment, and that the appellants concede.

In *United States* v. *Carmack,* 329 U.S. 230, 236-237, this Court said that the Fifth Amendment provides an owner "with important protection against abuse of the power of eminent domain." This is likewise true of the Fourteenth Amendment. It is submitted that this is a proper case for the application of that principle. It is not sufficient that an administrative agency has "determined" that the taking of particular property is "necessary to the carrying out of" the public

purpose (Finding 16), where the findings of fact and the evidence disclose that it was not necessary.

2. It is conceded that the Project Area as a whole is predominantly residential in character. On the other hand, it is undisputed that the city block in which appellants' property is located is predominantly commercial in character. The evidence that this city block is an integral part of the downtown business section of Nashville was not disputed and the district court so found (Finding 1).

Congress authorized grants and loans of federal funds to raze residential slums. Since shops and other business properties are frequently interspersed through residential neighborhoods, Congress imposed the requirement that a Project Area be "predominantly residential in character." It is submitted that this did not mean that the Project Area could be so gerrymandered as to include on its periphery city blocks of commercial property which are in no way related to the residential slums which are to be cleared.

If appellants are correct in their contention, the contract of September 26, 1952 (Defendants' Exhibit A) is invalid to the extent that it authorizes the acquisition of appellants' property by N.H.A. with federal funds.

Section 311, Housing Act of 1954, amended section 110(c), Housing Act of 1949, effective August 2, 1954, by eliminating the language "which is predominantly residential in character," and substituting other language. The critical date for determining whether or not the business section in which appellants' property is located was properly included in the Project Area was April 15, 1952, when the Plan was approved by the

City Council of Nashville. The 1954 amendments are significant, however, as an aid to the construction of the language contained in the Housing Act of 1949 before the amendment.

3. The contract between N.H.A. and the Government grants the Administrator of Housing and Home Finance Agency certain powers, which are summarized in Finding 9 of the District Court. Included in these powers is the power to refuse to concur in the "covenants, restrictions, terms or conditions" on which land may be sold or leased. (Section 201(8), Defendant's Exhibit 1). The power to refuse to concur implies the power to formulate and dictate. The actual effect of the contract is that the Administrator may determine the prices and terms and impose the restrictions, etc. on which the land is to be sold or leased. Otherwise the land cannot be sold or leased at all, a situation which would result in unbearable economic pressure on N.H.A.

The Plan refers to these restrictions, etc. as "covenant provisions," and indicates that the same results may thereby be accomplished as by "zoning regulations, subdivision regulations, building code and related regulations." (Defendants' Exhibit 9, p. 11). There is no stated limitation on the character of the restrictions which may be imposed. There is thus delegated to the Administrator of Housing and Home Finance Agency the legislative power to formulate and dictate these "covenant provisions."

Contracts of this general character were considered and held invalid as violating the Tenth Amendment in *Illinois Power & Light Corp.* v. *Centralia,* 11 F. Supp. 874 (D.C., E.D. Ill., 1935), and *Arkansas-Missouri*

Power Co. v. *Kennett,* 78 F. 2d 911 (C.A. 8, 1935). Following the decisions in these cases, the Federal Administrator of Public Works revised the form of loan and grant agreement then in use so as to eliminate the provisions held unlawful by the courts. See *Greenwood County* v. *Duke Power Co.,* 81 F. 2d 986, 989 (C.A. 4, 1936); *Duke Power Co.* v. *Greenwood County,* 299 U.S. 259, 81 L. ed. 178; *City of Centralia* v. *Illinois Power & Light Corp.,* 89 F. 2d 985 (C.A. 7, 1937). The new form of agreement eliminated all control by the Administrator over the work to be done, and to avoid any argument that the same controls were to be exercised *sub rosa,* a new provision was added reading as follows, as appears from the decision in *Duke Power Co.* v. *Greenwood County,* 91 F. 2d 665, 670:

> "This agreement is made with the express understanding that neither the loan nor the grant herein described is conditioned upon compliance by the applicant with any conditions not expressly set forth herein. There are no other agreements or understandings between the applicant and the Government or any of its agencies in any way relating to said project."

The net effect of these changes was to leave each municipality "entirely free from Federal control or direction in respect of the management and control of its plant and business." *Alabama Power Co.* v. *Ickes,* 302 U.S. 464, 478, 82 L. ed. 374, 377. The United States became only "a buyer of bonds, and a giver of gifts" (*Alabama Power Co.* v. *Ickes,* 91 F. 2d 303, 306, (C.A., D.C. 1937)); hence, the agreements were not illegal. The clear implication of the language of all the decisions in the PWA power cases is that if the

original loan and grant agreements had remained in effect, the outcome would have been different.

The contract of September 26, 1952, here involved closely resembles, if, indeed, it is not patterned after the original PWA loan and grant agreements which were held illegal in the *Kennett* and *Centralia* cases. The question is thus squarely presented to this Court for the first time: whether or not the power of the purse may be used to circumvent the Tenth Amendment by imposing conditions of this character in a loan and grant contract.

4. The conclusion of law of the District Court that the inclusion of appellants' property "was not arbitrary, capricious, or an abuse of discretion" is wholly at variance with the findings of fact of the Court. It is clear that the District Court felt that the *Berman* case compelled its decision for the appellees. We have hereinabove stated our reasons, however, for contending that the *Berman* case neither compelled nor supports that decision.

The determination of what is an abuse of discretion depends, of course, upon the standard or norm to be applied. It would be a legal novelty, however, were the Nashville Housing Authority's application of that standard or norm subject to examination, question, or review by no one other than the Nashville Housing Authority. In no other field is capriciousness, arbitrariness, or abuse of discretion left completely unreviewed or unreviewable. Methods of review might differ, but review there is. Appeals lie from the decisions of lower courts to higher courts. The decisions of administrative agencies are constantly subjected to review, as prescribed by the statutes whence comes

their authority or under the Administrative Procedure Act. In some proceedings, if no regular type of appeal or petition for review lies, review may actually be obtained by petitions for writs such as habeas corpus and mandamus. Review exists not so much as a matter of judicial grace, but by virtue of a constitutional right. That is the meaning of due process of law. But if the references from the *Berman* opinion upon which the court below relied in its conclusions of law can be taken out of context and applied literally and without qualification, as did the court below, then an abuse of discretion, arbitrariness, or capriciousness of a local housing agency is reviewable nowhere. Appellants would thereby have been deprived of their property without due process of law. This, we respectfully submit, is a result which goes beyond the scope of the *Berman* decision and which this Court could not have intended by its decision in that case.

The conclusions of law of the court below, applying as they do the language of the *Berman* case in a nonparallel situation, are at variance with the court's own findings of fact and the evidence in the case. The findings of fact themselves indicate how arbitrary and capricious are appellees' Redevelopment Plan and the inclusion of appellants' property therein. There is

nothing in *Berman* which requires such arbitrariness and capriciousness to remain uncorrected.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Civil No. 1804

ALFRED STARR, ET AL., *Plaintiffs*,

v.

THE NASHVILLE HOUSING AUTHORITY, ET AL., *Defendants*.

Findings and Conclusions

The above entitled cause was heard before the duly constituted three-judge District Court consisting of the Honorable John D. Martin, United States Circuit Judge, Honorable Elmer D. Davies, United States District Judge, and Honorable William E. Miller, United States District Judge, on March 27, 28, and 29, 1956.

Appearances: For plaintiffs were Waller, Davis & Lansden, Attorneys, Nashville, Tenn.; Barksdale, Hudgins & Osborn, Attorneys, Nashville, Tenn.; Elkin Garfinkle, Attorney, Nashville, Tenn.; and Sher, Oppenheimer & Harris, Attorneys, Washington, D. C. For defendants were Williams, Harwell, Howser & Thomas, Attorneys, Nashville, Tenn.; Robert Alexander, Attorney, Nashville, Tenn.; Hooker, Keeble, Dodson & Harris, Attorneys, Nashville, Tenn., and Fred Elledge, Jr., United States Attorney, Nashville, Tennessee.

The cause was submitted upon the pleadings, evidence, exhibits, and argument of counsel for plaintiffs and defendants, and, after due consideration thereof, the Court enters its findings of fact and conclusions of law, as follows:

FINDINGS OF FACT

1. Plaintiffs Alfred Starr, Milton Starr, and Michael Starr, individually and as Trustees of the estate of Jacob

Starr, deceased, own the land and building at 423 Fourth Avenue, North, in the City of Nashville, known as the Bijou Theatre property. This theatre is located in the downtown business section of Nashville, in an area in which businesses conducted by Negroes predominate, and is operated as a motion picture theatre for Negro patrons. A part of the building is used as offices for the officers and employees of the Bijou Amusement Company, which operates other similar theatres throughout the southern states.

2. The plaintiff H. G. Hill Realty Company, a Tennessee corporation, owns the land and building at the northeast corner of Charlotte Avenue and Fifth Avenue in the City of Nashville, including a one-story building on the corner. The store building was formerly used as a grocery store and is now leased to Montgomery Ward & Company, which operates a retail store for the sale of automotive supplies in said building. This plaintiff also owns parking lots adjacent to said building on both the east and north, one of which is used for patrons of the Montgomery Ward store, and the other as a commercial parking lot. This property is in the same city block with the property of the plaintiffs Alfred Starr, et al., above described, both properties being located in the city block bounded on the south by Charlotte Avenue, on the east by Fourth Avenue, North, on the west by Fifth Avenue, North, and on the north by Capitol Avenue.

3. Defendant, Nashville Housing Authority, is a public body and body corporate and politic of the State of Tennessee, with situs in this district. The Board of Commissioners of said Nashville Housing Authority, consisting of Walter J. Diehl, Chairman, and four other citizens of Nashville, met on April 17, 1950, and adopted resolutions whereby an application was made to defendant, Housing and Home Finance Agency, an instrumentality of the United States Government, for what was referred

to as a "Final Advance of Funds", for plans and other activities in preparation of projects to be assisted under Title 1 of the Housing Act of 1949, 42 U.S. Code, Secs. 1451, et seq. The minutes recited that this application had been prepared under the direction of Mr. Dale Hawkins and Mr. John Acuff. Thereafter, in July, 1950, said Nashville Housing Authority entered into a contract with the defendant, City of Nashville, for collaboration on a project known as The Capitol Hill Redevelopment Project. The boundaries of said proposed project, as described in the application to Housing and Home Finance Agency and in the contract with the City of Nashville, excluded the Morris Memorial Building at the corner of Fourth Avenue, North and Cedar Street, and excluded property to the west thereof, fronting on Charlotte Avenue (which is an extension of Cedar Street) between Fourth Avenue, North and Fifth Avenue, North, including the property of the plaintiff H. G. Hill Realty Company. The reason given in the application for excluding the buildings fronting on Charlotte Avenue between Fourth Avenue, North and Fifth Avenue, North was stated to be that they were "predominantly commercial in character, although there are families living on the second and third floors of some of the buildings, and the exclusion of these buildings will not prevent the redevelopment of the area by a logical plan".

4. The application for Final Advance of Funds was granted by Housing and Home Finance Agency, and thereafter, Nashville Housing Authority adopted "The Redevelopment Plan for the Capitol Hill Redevelopment Project UR Tenn. 2-1," dated March, 1952. The project area, as described in this Plan, continued to exclude the Morris Memorial Building, but included the entire block bounded on the south by Charlotte Avenue, on the east by Fourth Avenue, North, on the west by Fifth Avenue, North, and on the north by Capitol Avenue. The redevelopment Plan was approved by the City Council of Nashville on April 29, 1952, after a public hearing as required by law.

(42 U.S.C., Sec. 1455; Tennessee Code Supp. 1950, Sec. 3647.29P (Tenn. Code, Sec. 13-815)).

5. The Bijou Theatre building was erected in 1904; was designed by the same architect who designed the Metropolitan Opera House in New York; and was built of what is known as ordinary construction. The exterior walls are masonry; the first floor is concrete laid directly on the ground; and floors and balconies are of wood construction. Approximately 75 per cent of the buildings in downtown Nashville are of this type of construction. The Bijou Theatre is in excellent structural condition, having been well maintained over the years. It is not unsightly, unsafe, or unsanitary.

6. The H. G. Hill Realty Company building is a brick building, which was extensively remodeled in the past few years, and is a sound, substantial structure throughout. It is not unsightly, unsafe, or unsanitary.

7. Tennessee law requires that a Redevelopment Plan be ". . . sufficiently complete . . . (2) to indicate proposed land uses and building requirements in the area". Supplement to Code of Tennessee 1950, Sec. 3727.29P (Tenn. Code, Sec. 13-815). The Redevelopment Plan, however, designates no specific land uses for Area A, in which is located the city block hereinbefore described, except that no residential or industrial buildings may be located therein. The Plan provides that the "only permitted uses" shall be for "office and professional buildings, retail and department stores, banks, theaters, restaurants, club houses, cultural and educational facilities, bus passenger facilities, telephone central stations, post offices, hotels and commercial apartment hotels, and other uses of a similar nature, as well as off-street parking and loading facilities (including parking garages, underground or within the buildings to which they are incidental)." (Redevelopment

Plan, p. 12.) No building requirements in the area are indicated in the Plan.

8. The Plan states that Nashville Housing Authority "shall specifically reserve the right to review and approve the redeveloper's plans and specifications with respect to the use of the land, the location, height, bulk and land coverage of the proposed building or buildings to be provided by the redeveloper, and with respect further to the provision of the off-street parking and off-street loading facilities". (Redevelopment Plan, p. 13.) However, the Plan itself gives no indication as to what the requirements will be in this respect.

9. Under date of September 26, 1952, Nashville Housing Authority entered into a contract with defendant, Housing and Home Finance Agency, whereby the latter agreed to make certain loans and grants to Nashville Housing Authority for carrying out the project. Sec. 201(3) of said contract provides that Nashville Housing Authority may not make any changes in the basic elements of the Redevelopment Plan "except with the prior written consent of the Government"; Sec. 201(6) provides that the Authority shall not acquire or contract to acquire any land in the project area at prices, or subject to covenants, restrictions, terms or conditions, "which shall not have been concurred in by the Administrator"; Sec. 201(7) provides "that the Authority shall not institute eminent domain proceedings without the concurrence of the Administrator"; Sec. 201(8) provides that no land shall be sold or leased at prices or upon or subject to covenants, restrictions, terms or conditions "which have not been concurred in by the Administrator".

10. About five weeks prior to September 22, 1953, the attorneys for plaintiffs Alfred Starr, et al., advised the attorneys for Nashville Housing Authority that if the Bijou Theatre were excluded from the redevelopment area,

its owners would expend whatever sums might be necessary to make the building conform in appearance with other buildings to be constructed in the section of the redevelopment project area in which said Bijou Theatre was located. Having been informed that this proposition had been "taken under advisement", the plaintiff Alfred Starr wrote a formal letter, under date of September 22, 1953, to Nashville Housing Authority reiterating said proposition and giving reasons why such a course would be advantageous to both the Housing Authority and the plaintiffs. Copy of said letter was also sent the defendant, Housing and Home Finance Agency. The latter replied to Mr. Starr, through J. W. Follin, of the Division of Slum Clearance and Urban Development, that he felt confident that the local officials of Nashville Housing Authority would give due consideration to the letter. Mr. Starr received no reply at that time, or since, however, from Nashville Housing Authority. This suit was instituted on January 20, 1954. Mr. Starr testified that the commitment made in his letter of September 22, 1953, remains in effect. Defendants offered no evidence as to why no consideration was given to this proposal. Nashville Housing Authority gave no consideration to any plan for rehabilitation of any properties in the project Area.

11. At the time of the hearing of this cause, title to all property in the project area had been acquired by Nashville Housing Authority, with the exception of plaintiffs' properties. All buildings on Charlotte Avenue between Fourth Avenue and Fifth Avenue, with the exception of the building owned by the plaintiff H. G. Hill Realty Company, have been demolished, and all properties fronting on the west side of Fourth Avenue, North, between the Bijou Theatre and Charlotte Avenue have likewise been demolished. There are no dilapidated buildings remaining in Area A.

12. The Morris Memorial Building at the corner of Cedar Street and Fourth Avenue, North, is an office building, occupied by Negroes, which was built in 1924. The exteriors of the building on Cedar Street and Fourth Avenue, North, are of cut stone. The north and east sides of the building are of bare brick. A proposed new boulevard will run through the redevelopment area and said northern and eastern exposures of said building will be the ones visible from said boulevard. The Morris Memorial Building is not better maintained, is not more sound structurally, and is not more sanitary, safe or sightly, than the buildings of plaintiffs.

13. The property alleged in the complaint to be owned by plaintiffs H. G. Hill Realty Company and Alfred Starr, Milton Starr, and Michael Starr, individually and as Trustees of the Estate of Jacob Starr, and occupied by plaintiffs is in fact so owned and occupied and except for the present action would have been taken by the Nashville Housing Authority acting under the powers conferred upon it by Chapter 114, Public Acts of 1945, and Chapter 20, Public Acts of 1935, 1st Ex. Sess.

14. Pursuant to the provisions of Chapter 114, Public Acts of 1945, the Nashville Housing Authority adopted a Redevelopment Plan for the Capitol Hill Redevelopment Project by a resolution on April 7, 1952, submitted the same to the Planning Commission of the City of Nashville which approved same by resolution adopted April 7, 1952. The City Council of the City of Nashville on April 15, 1952, by resolution No. 52-461, provided for a public hearing to be held April 29, 1952, and for the publication of legal notice in the daily newspapers that such a hearing would be held. Said public hearing was held on April 29, 1952, affording opportunity for interested persons to present their views. Following the public hearing so held, the City Council by resolution No. 52-471 adopted April 29, 1952, found and determined that said Capitol Hill Redevelop-

ment Area, including within its boundaries as part thereof the plaintiffs' properties, constituted a blighted area within the meaning of the statute and approved said Redevelopment Plan.

15. The City Council in said resolution further authorized the Nashville Housing Authority to apply for additional federal financing assistance for the carrying out of said Redevelopment Plan. Pursuant to said resolution, the Nashville Housing Authority entered into a loan and grant contract with the defendant, The Housing and Home Finance Agency, dated September 26, 1952, wherein the Government agrees to make to the defendant Nashville Housing Authority a capital grant to enable said defendant to make project land available for redevelopment at its fair value for uses in accordance with the Project Redevelopment Plan in the amount of $5,207,200.00, and the Government further agrees to make a Project Temporary Loan in an amount not to exceed the sum of $8,309,300.00. The City of Nashville as a local grant in aid issued $1,000,000.00 in bonds for the construction of boulevards, streets, sidewalks, alleys, and other improvements in said Capitol Hill Redevelopment Area. Since the filing of this lawsuit the defendant Nashville Housing Authority has acquired by deed the properties of the original plaintiffs W. E. Norvell, Jr., John W. Napier, James W. Napier, Jr. and the Trustees of the Masonic Temple, Inc., and by condemnation proceedings the properties of the plaintiffs Lou Lusky and wife, Billye Lusky. Besides the properties of the plaintiffs H. G. Hill Realty Company and Alfred, Milton, and Michael Starr, the only other parcels of land in said project not yet acquired are those of McEwen Laundry Company, Martha Lindsey, and St. John's African Methodist Episcopal Church, which have been condemned, but the right to take which is being contested by the owners in the State Court.

16. In the exercise of its discretion, the Nashville Housing Authority has determined that the properties of the plaintiffs in this action form an essential and integral part of said Capitol Hill Redevelopment Project and the acquisition thereof is necessary to the carrying out of the purposes of said Redevelopment Plan as adopted by the defendant Nashville Housing Authority and approved by the City Council. The area included in the Capitol Hill Redevelopment Project is a slum and blighted area within the meaning of Chapter 114 of the Public Acts of Tennessee for the year 1945 and said area is a slum area and a deteriorated or deteriorating area which is predominantly residential in character, within the meaning of Title I of the Housing Act of 1949, Public Law 171, 81st Congress (42 U.S.C., Sec. 1460).

CONCLUSIONS OF LAW

1. Chapter 114, Public Acts of 1945, and Chapter 20, Public Acts of 1935, 1st Ex. Sess., are constitutional enactments.

Nashville Housing Authority v. *City of Nashville, et al.*, 192 Tenn. 103.

Knoxville Housing Authority v. *City of Knoxville*, 174 Tenn. 76.

Berman v. *Parker*, 348 U.S. 26; 99 L. ed. 27.

2. The determination of the area to be included in a redevelopment project is within the reasonable discretion of the legislative authorities and the courts will not oversee the choice of the boundary lines nor sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of the land to be taken for the project and the need for a particular tract to complete the integrated plan

rests in the discretion of the legislative branch of the government.

Berman v. *Parker*, supra.

3. The defendant Nashville Housing Authority as a redevelopment agency must approach the problem of the blighted parts of the community on an area, rather than on a structure by structure, basis, and it is immaterial that some particular structure within such area may be safe, sound, and well kept.

Berman v. *Parker*, supra.

4. The action of the defendants Nashville Housing Authority and City of Nashville in including the properties of the plaintiffs in said Project was not arbitrary, capricious, or an abuse of discretion.

5. The contract between the Nashville Housing Authority and the Housing and Home Finance Agency dated September 26, 1952, is legal as relating to plaintiffs' properties. Said contract is authorized by the Housing Act of 1949, 63 Stat. 413, 42 U.S.C. 1451-1460, and does not delegate state power to the Federal Government in violation of the Tenth Amendment to the United States Constitution.

This 8th day of October, 1956.

/s/ JOHN D. MARTIN
United States Circuit Judge

/s/ ELMER D. DAVIES
United States District Judge

/s/ WILLIAM E. MILLER
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

RECEIVED FOR ENTRY
8:00 A. M.
DEC 26, 1956
L.B. ORMES, CLERK
By R.D. Hall D.C.

Civil No. 1804

ALFRED STARR, ET AL., *Plaintiffs*,

v.

THE NASHVILLE HOUSING AUTHORITY, ET AL., *Defendants*.

This cause having come on for trial before the duly constituted three-judge district court consisting of the Honorable John D. Martin, United States Circuit Judge, Honorable Elmer D. Davies, United States District Judge, and Honorable William E. Miller, United States District Judge, on March 27, 28, and 29, 1956, and the Court having heard the evidence and the arguments of counsel and having heretofore filed its findings of fact and conclusions of law declaring Chapter 114 of the Public Acts of Tennessee for the year 1945 and Chapter 20 of the Public Acts of Tennessee for the year 1935 First Extra Session to be constitutional enactments and sustaining the validity of the contract between The Nashville Housing Authority and the Housing and Home Finance Agency, dated September 26, 1952, as relating to the plaintiffs' properties; and finding that the area of the Capitol Hill Redevelopment Project is a slum and blighted area within the meaning of Chapter 114 of the Public Acts of Tennessee for the year 1945 and that said area is a slum area and a deteriorated or deteriorating area which is predominantly residential in character within the meaning of Title I of the Housing Act of 1949, Public Law 171, 81st Congress,

and holding that the action of the defendants The Nashville Housing Authority and the City of Nashville in including the properties of the plaintiffs in said Project was not arbitrary, capricious or an abuse of discretion, it is hereby ORDERED by the Court

1. That judgment be and hereby is entered in favor of the defendants and against the plaintiffs.

2. That the complaint be and the same is hereby dismissed.

3. That costs are awarded to the defendants.

Dated this 21st day of December, 1956.

JOHN D. MARTIN
United States Circuit Judge

ELMER D. DAVIES
United States District Judge

WILLIAM E. MILLER
United States District Judge

APPENDIX B

Constitution of the United States

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV

Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

Housing Act of 1949. 63 Stat. 413

DECLARATION OF NATIONAL HOUSING POLICY

Sec. 2. The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective hereby established shall be: (1) private enterprise shall be

encouraged to serve as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need; (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life; (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own acount and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill. The Housing and Home Finance Agency and its constituent agencies, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist (1) the production of housing of sound standards of design, construction, livability, and size for adequate family life; (2) the reduc-

tion of the costs of housing without sacrifice of such sound standards; (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly of home-building materials and equipment, and the increase of efficiency in residential construction and maintenance; (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and (5) the stabilization of the housing industry at a high annual volume of residential construction. [42 U.S.C. 1441]

TITLE I—SLUM CLEARANCE AND COMMUNITY DEVELOPMENT AND REDEVELOPMENT

• • • • • • • • • •

LOANS

Sec. 102. (a) To assist local communities in eliminating their slums and blighted areas and in providing maximum opportunity for the redevelopment of project areas by private enterprise, the Administrator may make temporary and definitive loans to local public agencies for the undertaking of projects for the assembly, clearance, preparation, and sale and lease of land for redevelopment. Such loans (outstanding at any one time) shall be in such amounts not exceeding the expenditures to be made by the local public agency as part of the gross project cost, bear interest at such rate (not less than the applicable going Federal rate), be secured in such manner, and be repaid within such period (not exceeding, in the case of definitive loans, forty years from the date of the bonds evidencing such loans), as may be deemed advisable by the Administrator. [42 U.S.C. 1452(a)]

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LOCAL DETERMINATIONS

Sec. 105. Contracts for financial aid shall be made only with a duly authorized local public agency and shall require that—

(a) The redevelopment plan for the project area be approved by the governing body of the locality in which the project is situated, and that such approval include findings by the governing body that (i) the financial aid to be provided in the contract is necessary to enable the land in the project area to be redeveloped in accordance with the redevelopment plan; (ii) the redevelopment plans for the redevelopment areas in the locality will afford maximum opportunity, consistent with the sound needs of the locality as a whole, for the redevelopment of such areas by private enterprise; and (iii) the redevelopment plan conforms to a general plan for the development of the locality as a whole;

(b) When land acquired or held by the local public agency in connection with the project is sold or leased, the purchasers or lessees shall be obligated (i) to devote such land to the uses specified in the redevelopment plan for the project area; (ii) to begin the building of their improvements on such land within a reasonable time; and (iii) to comply with such other conditions as the Administrator finds, prior to the execution of the contract for loan or capital grant pursuant to this title, are necessary to carry out the purposes of this title;

* * * * * * * * *

(d) No land for any project to be assisted under this title shall be acquired by the local public agency except after public hearing following notice of the date, time, place, and purpose of such hearing. [42 U.S.C. 1455]

GENERAL PROVISIONS

Sec. 106. * * * (c) In the performance of, and with respect to, the functions, powers, and duties vested in him by this title, the Administrator, notwithstanding the provisions of any other law, may—

(1) sue and be sued;

(2) foreclose on any property or commence any action to protect or enforce any right conferred upon him by any law, contract, or other agreement, and bid for and purchase at any foreclosure or any other sale any project or part thereof in connection with which he has made a loan or capital grant pursuant to this title. In the event of any such acquisition, the Administrator may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, dispose of, and otherwise deal with, such project or part thereof: *Provided,* That any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

(3) enter into agreements to pay annual sums in lieu of taxes to any State or local taxing authority with respect to any real property so acquired or owned, and such sums shall approximate the taxes which would be paid upon such property to the State or local taxing authority, as the case may be, if such property were not exempt from taxation;

(4) sell or exchange at public or private sale, or lease, real or personal property, and sell or exchange any securities or obligations, upon such terms as he may fix;

(5) obtain insurance against loss in connection with property and other assets held;

(6) subject to the specific limitations in this title, consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, amount of capital grant, or any

other term, of any contract or agreement to which he is a party or which has been transferred to him pursuant to this title; and

(7) include in any contract or instrument made pursuant to this title such other covenants, conditions, or provisions (including such covenants, conditions, or provisions as, in the determination of the Administrator, are necessary or desirable to prevent the payment of excessive prices for the acquisition of land in connection with projects assisted under this title) as he may deem necessary to assure that the purposes of this title will be achieved. No provision of this title shall be construed or administered to permit speculation in land holding. [42 U.S.C. 1456(c)]

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DEFINITIONS

Sec. 110. The following terms shall have the meanings, respectively, ascribed to them below, and, unless the context clearly indicates otherwise shall include the plural as well as the singular number:

(a) "Redevelopment area" means an area which is appropriate for development or redevelopment and within which a project area is located.

(b) "Redevelopment plan" means a plan, as it exists from time to time, for the development or redevelopment of a redevelopment or project area, which plan shall be sufficiently complete (1) to indicate its relationship to definite local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements; and (2) to indicate proposed land uses and building requirements in the project area; *Provided,* That the Administrator shall take such steps as he deems necessary to assure consistency between the redevelopment plan

and any highways or other public improvements in the locality receiving financial assistance from the Federal Works Agency.

(c) "Project" may include (1) acquisition of (i) a slum area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses, or (iii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses, or (iv) open land necessary for sound community growth which is to be developed for predominantly residential uses (in which event the project thereon, as provided in the proviso of section 103 (a) hereof, shall not be eligible for any capital grant); (2) demolition and removal of buildings and improvements; (3) installation, construction, or reconstruction of streets, utilities, and other site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan; and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the local public agency itself) at its fair value for uses in accordance with the redevelopment plan. For the purposes of this title, the term "project" shall not include the construction of any of the buildings contemplated by the redevelopment plan, and the term "redevelopment" and derivatives thereof shall mean develop as well as redevelop. For any of the purposes of section 109 hereof, the term "project" shall not include any donations or provisions made as local grants-in-aid and eligible as such pursuant to clauses (2) and (3) of section 110 (d) hereof.

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(i) "Administrator" means the Housing and Home Finance Administrator. [42 U.S.C. 1460]

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Tennessee Code

13-801. Short title.—Chapters 8 through 11 of this title may be referred to as "The Housing Authorities Law."

13-802. Definitions.—The following terms, wherever used or referred to in the Housing Authorities Law shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "housing authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of the Housing Authorities Law for the purposes, with the powers and subject to the restrictions hereinafter set forth.

• • • • •

(7) "Government" shall include the state and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

• • • • •

(10) "Housing project" shall include all real and personal property, buildings and improvements, stores, offices, lands, for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking (a) to demolish, clear, remove, alter or repair unsanitary or unsafe housing, and/or (b) to provide safe and sanitary dwelling accommodations for persons of low income. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith. The term may also include such

buildings and equipment for recreational or social assemblies for educational, health or welfare purposes, and such necessary utilities, as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations.

* * * * *

13-804. Powers of housing authority.—An authority shall have the following powers:

* * * * *

(4) To prepare, carry out and operate housing projects;

* * * * *

(8) To act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof;

* * * * *

(13) To lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor;

(14) To enter upon any building or property in order to conduct investigations or to make surveys or soundings;

(15) To purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property, real or personal or any interest therein from any person, firm, corporation, city, municipality, or government;

(16) To acquire by eminent domain any real property, including improvements and fixtures thereon;

(17) To sell, exchange, transfer, assign, or pledge any property, real or personal or any interest therein to any person, firm, corporation, municipality, city, or government;

(18) To own, hold, clear and improve property;

(19) To insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable;

(20) To procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project;

(21) To borrow money upon its bonds, notes, debentures, or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner;

(22) In connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects;

(23) In connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by the Housing Authorities Law;

(24) To invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control;

(25) To sue and be sued;

(26) To have a seal and to alter the same at pleasure;

(27) To have a perpetual succession;

(28) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

* * * * *

13-813. Blighted areas defined.—Blighted areas are areas (including slum areas) with buildings or improvements which, by reason of dilapidation, obsolescence, over-

crowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use, or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

13-814. Powers of housing authority as to blighted areas. —Any housing authority now or hereafter established under and pursuant to the provisions of the Housing Authorities Law (including any municipal housing authority whether created under and pursuant to the provisions of such law or of any special statute) may carry out any undertaking hereinafter called a redevelopment project and to that end may:

(1) Acquire blighted areas;

(2) Acquire other real property for the purpose of removing, preventing, or reducing blight, blighting factors, or the causes of blight;

(3) Acquire real property where the condition of the title, the diverse ownership of the real property to be assembled, the street or lot layouts, or other conditions, prevent a proper development of the property and where the acquisition of the area by the authority is necessary to carry out a redevelopment plan;

(4) Clear any areas acquired and install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(5) Sell or lease land so acquired for uses in accordance with the redevelopment plan;

(6) Accomplish a combination of the foregoing to carry out a redevelopment plan; and/or

(7) Have and enjoy all the rights, powers, privileges and immunities granted to housing authorities under such

law, and/or under any special act by which the authority may have been created, and/or any other provisions of law relating to slum clearance and housing projects for persons of low income;

Provided that nothing contained in §§ 13-812, 13-913 and/or in any special municipal housing authorities law shall be construed as limiting the power of an authority, in the event of default by a purchaser or lessee of land in a redevelopment plan, to acquire property and operate it free from restrictions contained in said §§ 13-812, and 13-913 or in any special statute as aforesaid relating to tenant selection or operation without profit.

13-815. Conditions precedent to initiation of redevelopment project — Approval by muncipality of plan. — An authority shall not initiate any redevelopment project under the Housing Authorities Law until the governing body (or agency designated by it or empowered by law so to act) of each city or town (hereinafter called "municipalities") in which any of the area to be covered by said project is situated, has approved a plan (herein called the "redevelopment plan") which provides an outline for the development or redevelopment of said area and is sufficiently complete;

(1) To indicate its relationship to definite local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements;

(2) To indicate proposed land uses and building requirements in the area; and

(3) To indicate the method of the temporary relocation of persons living in such areas, and also the method of providing (unless already available) decent, safe and sanitary dwellings substantially equal in number to the number of substandard dwellings to be cleared from said

area, at rents within the financial reach of the income groups displaced from such substandard dwellings. Such municipalities are hereby authorized to approve redevelopment plans through their governing body or agency designated by it for that purpose. Any state public body referred to in § 13-809 shall have the rights and powers to cooperate with and assist housing authorities with respect to redevelopment projects in the same manner as though the provisions of said section were applicable to redevelopment projects.

13-816. Disposal and use of land consistent with redevelopment plan.—The authority may make land in a redevelopment project available for use by private enterprise or public agencies in accordance with the redevelopment plan. Such land may be made available at its use value, which represents the value (whether expressed in terms of rental or capital price) at which the authority determines such land should be made available in order that it may be developed or redeveloped for the purposes specified in such plan.

To assure that land acquired in a redevelopment project is used in accordance with the redevelopment plan, an authority, upon the sale or lease of such land, shall obligate purchasers or lessees;

(1) To use the land for the purpose designated in the redevelopment plan;

(2) To begin the building of their improvements within a period of time which the authority fixes as reasonable; and

(3) To comply with such other conditions as are necessary to carry out the purposes of the Housing Authorities Law.

Any such obligations by the purchaser shall be covenants and conditions running with the land where the authority so stipulates.

13-817. Tax status of property leased to individuals or corporations.—Any property which the authority leases to private individuals or corporations for development under a redevelopment plan shall have the same tax status as if such leased property were owned by such private individuals or corporations.

13-818. Authority authorized to obtain financial aid from federal government for redevelopment project. — An authority may borrow money or accept contributions from the federal government to assist in its undertaking redevelopment projects. An authority may do any and all things necessary or desirable to secure such financial aid (including obligating itself in any contract with the federal government for annual contributions to convey to the federal government the project to which said contract relates upon the occurrence of a substantial default thereunder), in the same manner as it may do to secure such aid in connection with slum clearance and housing projects under the provisions of the Housing Authorities Law.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 936

ALFRED STARR et al.,
Appellants,

v.

NASHVILLE HOUSING AUTHORITY et al.,
Appellees.

On Appeal from the United States District Court for the Middle District of Tennessee.

MOTION TO AFFIRM.

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ALFRED STARR et al.,
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Appellees.

On Appeal from the United States District Court for the Middle District of Tennessee.

MOTION TO AFFIRM.

The Nashville Housing Authority and the City of Nashville respectfully move the Court to affirm the judgment of the three-judge District Court because it is manifest that the questions presented are so unsubstantial as not to need further argument.

The Tennessee Statute involved (Sections 13-801 et seq., Tennessee Code Annotated) is constitutional.

Nashville Housing Authority v. City of Nashville et al., 192 Tenn. 103;

Knoxville Housing Authority v. City of Knoxville, 174 Tenn. 76;

Berman v. Parker, 348 U. S. 26, 99 L. Ed. 27, 75 S. Ct. 98.

It is the insistence of these appellees that every question presented by the appellants has been determined adversely

to them by this Honorable Court in the case of **Berman v. Parker**, supra. Furthermore, "It is settled law in the federal courts that an injunction will not issue to restrain the action of officers of a state upon the mere ground that they are acting unconstitutionally. Matthews v. Rogers, 284 U. S. 521, 52 S. Ct. 217, 76 L. Ed. 447; Stratton v. St. L. S. W. R. Co., 284 U. S. 530, 52 S. Ct. 222, 76 L. Ed. 465; Yarnell v. Hillsborough Packing Co. (C. C. A.), 70 F. (2d) 435; Pape v. St. Lucie Inlet Dist. (C. C. A.), 75 F. (2d) 865, 869."

Bradford v. Hurt, 84 F. (2d) 722.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 936

MRS. ELIZABETH LYLE STARR, ET AL., *Appellants*

v.

NASHVILLE HOUSING AUTHORITY, ET AL.

On Appeal from the United States District Court for the Middle District of Tennessee

---

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1, of the Revised Rules of this Court, the Housing and Home Finance Agency and Albert Cole, its Administrator, appellees, move that the judgment of the District Court be affirmed on the ground that the questions on which decision of the cause depends are so unsubstantial as not to need further argument.

STATEMENT

This is a direct appeal from the final judgment of the District Court, specially constituted under 28 U.S.C., Sections 2282 and 2284, dismissing appellants' complaint and thereby refusing to enjoin the

appellees from instituting condemnation procedings to take appellants' property for redevelopment purposes pursuant to the Tennessee Housing Authorities Law (Tennessee Code, Sections 13-801, *et seq.*: Jurisdictional Statement, App. B, Pages 20a-26a). The complaint alleged that the Tennessee Housing Authorities Law is unconstitutional as applied to appellants' property in performance of a contract between the Nashville Housing Authority and the Housing and Home Finance Agency, and sought, in addition to injunctive relief, an adjudication that said contract is not authorized by the Housing Act of 1949, 63 Stat. 413, 42 U.S.C. 1441, *et seq.*

ARGUMENT

The District Court's dismissal of the complaint was based on its holding that the action of the Nashville Housing Authority and the City of Nashville, in including appellants' property in the redevelopment project, was not arbitrary and capricious or an abuse of discretion (Jurisdictional Statement, App. A, p. 10a), and on this Court's decision in *Berman* v. *Parker*, 348 U.S. 26. We contend that the District Court's decision is clearly correct and that the questions raised by the appeal are so unsubstantial as not to need further argument.

1. ANY DOUBT AS TO THE VALIDITY OF THE TAKING OF APPELLANTS' PROPERTY IS RESOLVED BY *BERMAN* v. *PARKER*, *348 U.S. 26*

Appellants' contentions that their theater is not unsafe, unsightly or unsanitary, that taking of their property was unnecessary and that the Nashville

Housing Authority acted arbitrarily and capriciously precisely parallel the contentions urged by the property owner and rejected by this Court in *Berman* v. *Parker, supra.* The fundamental error which this Court found in an argument strikingly similar to appellees' was that it failed to consider the redevelopment program on an area-wide rather than a block by block basis. Thus, appellants' argument ignores the holding of this Court that: "It is not for the courts to determine whether it is necessary for successful consummation of the project that unsafe, unsightly, or insanitary buildings alone be taken * * * any more than it is the function of the courts to sort and choose among the various parcels selected for condemnation." 348 U.S. at 36. The contentions that the Court may undertake to decide whether, as appellants' claim (Jurisdictional Statement, p. 13), the boundaries were "artificially or arbitrarily" drawn, or power was lacking to clear an area completely and redevelop it under appropriate restrictions, have therefore been explicitly rejected by this Court.[1]

---

[1] Appellants' reliance on comparison to another building, not taken (Jurisdictional Statement, p. 8), is essentially the same position as the assertion of the district court in the *Berman* case that it could decide whether the boundary line of the project was properly drawn on Fourth Street. *Schneider* v. *District of Columbia*, 117 F.Supp. 705, 725 (D.D.C.). The brief filed on behalf of the Agency in that case (No. 22, O.T., 1954, pp. 47-54) showed at length the invalidity of that assertion of power. The irrelevance of *Cincinnati* v. *Vester*, 281 U.S. 439, to a case like the present one, is spelled out in *United States* v. *Certain Real Estate, Etc.*, 217 F. 2d 920, 925 (C.A. 6).

2. APPELLANTS HAVE NO STANDING TO CHALLENGE THE VALIDITY OF THE CONTRACT BETWEEN THE NATIONAL AND THE LOCAL HOUSING AUTHORITIES.

Appellants have no direct concern with the contract between the two housing authorities. Their interest is collateral, arising solely from the circumstance that the contract represents one of the means by which the project is being financed. This is, we submit, insufficient basis for a challenge of the contract on constitutional grounds. Appellants would seem to have no better standing than the prospective bidders for Government contracts in *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, or the electric company competing with municipal plants in *Alabama Power Co.* v. *Ickes*, 302 U.S. 464. In the *Alabama Power Co.* case this Court said that the direct injury necessary to confer standing must be "a wrong which directly results in the violation of a legal right" (302 U.S. at 479). See also *Allied-City Wide* v. *Cole*, 230 F.2d 827, affirming dismissal of a similar suit relating to an urban renewal project in New York City, where the Court of Appeals for the District of Columbia said: "One who will be injured by another's lawful use of money has no standing to assert that a third person's action in providing the money will be illegal."

Appellees clearly lack standing to challenge the inter-agency contract.

3. IN ANY EVENT, APPELLANTS' ATTACKS UPON THE CONTRACT BETWEEN THE HOUSING AGENCIES ARE ENTIRELY WITHOUT MERIT.

Appellants argue (Jurisdictional Statement, pp. 14-15) that the contract is invalid insofar as the project includes the block in which appellants' property is located because the Housing Act of 1949 was limited to a slum or deteriorating area "which is predominantly residential in character" (Jurisdictional Statement, App. B, p. 19a). Here again appellants seek to treat separately individual blocks of an area which must be considered as an entity. The statute was limited, not absolutely to a residential area, but to an area "predominantly" residential. The District Court found the area was predominantly residential in character (Jurisdictional Statement, App. A, p. 9a) and appellants do not question the District Court's findings of fact (Jurisdictional Statement, p. 9). *Berman* v. *Parker*, 348 U.S. 26, also rejects appellants' attempted block-by-block approach.

Appellants attack the contract because concurrence of the Administrator of the Housing and Home Finance Agency is required for various actions such as changing basic elements of the plan, the prices and restrictions under which lands are acquired or sold and the institution of eminent domain proceedings (see Fdg. 9, Jurisdictional Statement, App. A, p. 5a). These provisions are plainly reasonable to give assurance that (1) the loan and grant money will be economically spent and not wasted on excessive purchase prices or inadequate sale prices, (2) the loan will be repaid, and (3) the purpose of elimination of future

slums by controlling land use will be accomplished. For these purposes, the limitations were clearly appropriate and cannot be said to constitute a delegation of local legislative power. The two cases relied upon by appellant (Jurisdictional Statement, pp. 15-16)[2] are, at best, of doubtful authority even as regards the loan and grant program under the P. W. A. See *School Dist. No. 37, Clark County, Wash.* v. *Isackson*, 92 F.2d 768 (C.A. 9), certiorari denied, 303 U.S. 636. In any event, those cases do not, we submit, throw even a shadow of a doubt on the stipulations of the redevelopment contract and the statutory authority for such stipulations (Jurisdictional Statement, App. B, pp. 17a-18a). In *Greenwood County* v. *Duke Power Co.*, 81 F.2d 986, 997 (C.A. 4) (Jurisdictional Statement, p. 16), the court stated: "Certainly where the federal government is making a loan to aid in the relief of unemployment, it may stipulate that the loan shall be used in such way as will best accomplish that purpose."

---

[2] *Illinois Power and Light Corp.* v. *Centralia*, 11 F.Supp. 874 (E.D. Ill.); *Arkansas-Missouri Power Co.* v. *City of Kennett, Mo.*, 78 F.2d 911 (C.A. 8).

CONCLUSION

For the foregoing reasons, it is clear that this appeal presents no substantial question and that the judgment of the District Court should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 936

MRS. ELIZABETH LYLE STARR, ET AL., *Appellants*

v.

NASHVILLE HOUSING AUTHORITY, ET AL., *Appellees*

On Appeal from the United States District Court for the Middle District of Tennessee

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEES' MOTIONS TO AFFIRM.

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---

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEES' MOTIONS TO AFFIRM.

Pursuant to Rule 16, paragraph 3, of the Rules of this Court, appellants oppose the motions to affirm filed herein by appellees, for the reasons stated below.

STATEMENT

This is a direct appeal from the judgment of the United States District Court for the Middle District of Tennessee. The findings of fact and conclusions of law of the District Court, reported in 145 F. Supp. 498, are found at pages 1a to 10a of appellants' Jurisdictional Statement. The statutes involved, cited at

page 3 of the Jurisdictional Statement, are set out at pages 13a to 26a thereof. The jurisdiction of this Court to review the decision of the District Court by direct appeal is set forth at pages 2 to 3 of the Jurisdictional Statement; and the questions presented by this appeal, at pages 3 to 5 thereof. A full statement of the case is set forth at pages 5 to 9 of the Jurisdictional Statement.

ARGUMENT

1. Appellees' heavy reliance, and that of the court below, upon Berman v. Parker, 348 U.S. 26, is misplaced.

In the *Berman* case this Court, on appeal, affirmed the judgment of a three-judge district court which, on motion to dismiss, upheld the constitutionality of the District of Columbia Redevelopment Act of 1945, 60 Stat. 790. The lower court in that case (*sub. nom. Schneider* v. *District of Columbia,* 117 F. Supp. 705) stated (at 725):

> The complaints in the two actions at bar are pitched entirely upon a challenge of the constitutionality of the Redevelopment Act, and, except the issue as to commercial property, no other issue as to the application of the statute to the property of plaintiffs is raised by the pleadings. Therefore, since the statute, as we construe it, is constitutional, we must grant the motion to dismiss.
>
> In the argument by plaintiffs' counsel in support of their motions for summary judgment, reference was made to arbitrary and capricious action by the Planning Commission in fixing the boundary lines of the Southwest Redevelopment Area "B" to include the plaintiff's commercial properties, while excluding other commercial properties on the same street. This issue, however, is not raised by the pleadings. * * *

Thus, constitutionality was the sole issue in *Schneider;* there was no issue of arbitrary and capricious application of the statute, since it was not raised by the pleadings. On appeal to this Court (the *Berman* case) there could be no issues other than those there had been in the court below, namely, only the issue of constitutionality.

The issue in *Berman,* therefore, is not in issue here, because we concede the constitutionality of the Tennessee statute authorizing slum clearance and redevelopment. Jurisdictional Statement, p. 13. And in the instant case, unlike in *Berman,* the pleadings clearly raised the issue of arbitrary and capricious action in the application of the statute.

Despite this marked difference between the two cases, appellees insist upon relying upon *Berman* and even state (in the motion to affirm filed by the Solicitor General, pp. 2-3)[1] that appellants' contentions "that the Nashville Housing Authority acted arbitrarily and capriciously precisely parallel the contentions urged by the property owner and rejected by this Court in *Berman.*" But, as we have shown, such contention, though urged, was not in issue in *Berman,* and the language in this Court's opinion relating to that contention must, we respectfully submit, be regarded as *obiter dicta.*

Indeed, this in itself raises a substantial question warranting further argument: namely, to what extent is the *language* of the *Berman* case to be taken to control a case where, unlike in *Berman,* arbitrary and capricious action is squarely in issue.

---

[1] This motion to affirm will hereinafter be called the Federal motion. The motion filed by Nashville Housing Authority et al. will hereinafter be called the Nashville motion.

2. Contrary to appellees' insistence (Federal motion, p. 5) and contrary to the requirements of the applicable Federal statute (section 110(c), Housing Act of 1949, 63 Stat. 413), appellants' property is NOT located in an area "predominantly residential in character".

The Federal appellees have confused two findings of the court below: In Finding 16 (Jurisdictional Statement, p. 9a) the court below stated: "The area included in the Capitol Hill Redevelopment Project * * * is a slum area and a deteriorated or deteriorating area which is predominantly residential in character, within the meaning of Title I of the Housing Act of 1949, * * *." But in Finding 1 (Jurisdictional Statement, p. 2a) the court found that appellants' "theatre is located in the downtown business section of Nashville, in an area in which businesses * * * predominate." There is thus raised the question of which "area" we are talking about, the general area referred to by the court in Finding 16 or the area in which appellants' property is located. Aside from the point that the court's Finding 16, although called by it a finding of fact, is in fact a conclusion of law, we submit that Finding 1, dealing with appellants' property, is the one which must here control.

Having found that appellants' "theatre is located in the downtown business section of Nashville, in an area in which businesses * * * predominate," the court below erred in concluding as a matter of law that it was located in a predominantly residential area. This was not only error on the part of the court below, but also the inclusion of this part of Nashville's downtown business section in the Capitol Hill Redevelopment Project was arbitrary and capricious action on the part of appellees.

Here again there is a great distinction between the instant case and *Berman,* upon which appellees place their whole reliance. In *Berman* the peripheral commercial area included in the Southwest Redevelopment project was a commercial area existing in a residential neighborhood. In the instant case, however, it is a part of the downtown business area of Nashville which has been tacked on to a redevelopment area.

Thus, if the District of Columbia Redevelopment Land Agency decided to redevelop the northwest section of the District so as to eliminate all residential slums therein, it would be understandable if commercial establishments existing in and as a part of such residential slums were to be taken and razed. But surely *Berman* does not mean that the redevelopment officials could decide, *without review by any court,* to use E Street, N. W., as the southern boundary of their redevelopment project, and to take and raze the National Press Club building and Garfinkel's department store because to the north, east, and west of those buildings, although some blocks distant, there are to be found substantial slum areas. The arbitrary and capricious action by appellees in Nashville differs only in degree from the suggested District of Columbia example.

3. Appellants have standing to challenge the validity of the Tennessee Housing Authorities Law (Jurisdictional Statement, pp. 20a-26a) as sought to be applied to their property.

Appellants do not merely challenge the validity of the federal-local contract, as is intimated by the Federal appellees (Federal motion, p. 4), but the state statute itself as applied to appellants' property. See Jurisdictional Statement, p. 2.

Appellants are *not* in the position of prospective bidders for Government contracts (cf. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113) or of prospective competitors with municipal power plants (cf. *Alabama Power Co.* v. *Ickes*, 302 U.S. 464). Appellants, on the contrary, are threatened by appellees with a very immediate, direct, and personal injury. In the *Alabama Power* case, the petitioner anticipated "damage to something it does not possess—namely, a right to be immune from lawful municipal competition." 302 U.S. at 480. In the instant situation, however, appellants stand to have their real property actually taken from them without due process of law and for a non-public use. Appellants have a legally-protected right not to have their property so taken. To prevent such an "abuse of the power of eminent domain" the Constitution stands between appellants and appellees. See *United States* v. *Carmack*, 329 U.S. 236-37.

Allied-City Wide v. *Cole*, 230 F. 2d 827 (C.A. D.C.), cited at page 4 of the Federal motion, for the proposition that "One who will be injured by another's lawful use of money has no standing to assert that a third person's action in providing the money will be illegal," contributes nothing. One of the important and substantial questions which the instant case brings before this Court is tied up in that word "lawful". Appellants stand to be injured by the Nashville Housing Authority's *un*lawful use of money received from the Federal appellees—*un*lawful by reason of many things, *inter alia*, that appellants' property is not in a predominantly residential area, that the contract between the federal and local housing authorities involves improper delegation (see Jurisdictional Statement, pp. 15-17), etc. By reason of this *un*lawful

use of money with direct reference to appellants' property, appellants have standing even under the *Allied-City Wide* case.

4. The extent to which the Nashville Housing Authority has delegated legislative authority in critical areas to the Housing and Home Finance Agency raises substantial constitutional questions.

We shall not repeat the argument made in our Jurisdictional Statement (pp. 15-17) concerning improper delegation, which is attacked by the Federal appellees. We believe an analysis of the cases cited at pages 15-16 of the Jurisdictional Statement and of the case cite on page 6 of the Federal motion demonstrates at the very least the dubious constitutionality of appellees' contract, and submit that such dubiety in itself presents a substantial question warranting argument before and full consideration by this Court.

The Federal appellees moreover assert that the provisions in the federal-local contract giving the Administrator of the Housing and Home Finance Agency effective control over certain basic elements of the Nashville redevelopment plan are "plainly reasonable", not only to assure that the loan and grant money will be appropriately spent and that the loan will be repaid, but also to assure the "elimination of future slums" (Federal motion, pp. 5-6). This is a bold assertion by appellees, undocumented and unsupported by any citation to constitutional provision or court decision. In addition we note that the federal-local contract does not limit the restrictions which may be imposed by the Administrator even to those which have a purpose of preventing a recurrence of slum conditions. The contract is in fact so broad that under it the Federal government may be in the position of per-

forming ordinary zoning functions normally within the province of local governments. The issue thus raised by the very breadth of the contract in itself presents a substantial question warranting argument before and full consideration by this Court.

5. The Nashville motion to affirm is completely without merit.

It makes two points: First, that the *Berman* case decided every question presented by appellants. As shown above, *Berman* decided only constitutionality, which appellants concede. It did not pass upon the arbitrary and capricious action of the housing officials, because in *Berman* the pleadings did not present that issue.

Second, the Nashville motion cites (p. 2) a group of cases for the proposition that "an injunction will not issue to restrain the action of officers of a state upon the mere ground that they are acting unconstitutionally." One cannot argue with a proposition thus stated. Of course there must be more than the "mere ground" of unconstitutional action to warrant the issuance of a Federal injunction. It is well settled that an injunction will be issued only in support of clearly established property rights, only when there is no adequate remedy at law, and only when issuance

is necessary to prevent irreparable injury, all of which factors are present in the instant case.[2]

---

[2] *Bradford* v. *Hurt*, 84 F. 2d 722 (CCA 5), cited by the local appellees for their proposition, involved a suit to enjoin local law enforcement authorities from instituting criminal prosecution and injunction proceedings in the state courts against the plaintiff to prevent him from operating a proposed parimutuel gambling system. The bill was dismissed on the grounds that:

> " • • • a federal equity injunction [will] not issue merely to prevent the bringing of suits in a state court • • • or the enforcement of criminal statutes claimed to be unconstitutional. • • • It is sufficient for us to conclude, as we do, that plaintiff's bill is wholly wanting in equity, in that it does not show a clearly established constitutional right, either under general principles or under the laws of Texas, to run in Texas a gambling establishment • • •." (84 F. 2d at 724).

The other cases cited by the local appellees (also cited in *Bradford* v. *Hurt*) are likewise inapposite. In two of them (*Matthews* v. *Rogers*, 284 U.S. 521, and *Stratton* v. *St. L. S.W. R. Co.*, 284 U.S. 530), suits to enjoin the collection of taxes, the Court found that there was an adequate remedy at law. These cases fall within the familiar principle that the federal courts will not normally exercise their equity jurisdiction to interfere in matters involving the fiscal affairs of a state or its subdivision without a substantial showing of irreparable injury requiring the protection of a federal court. Based on the same principle, a suit by a bondholder, complaining that the State Port Authority had not levied sufficient taxes and had improperly apportioned among bond issues the taxes collected, was dismissed in *Pope* v. *St. Lucie Inlet Dist.*, 75 F. 2d 865 (CCA 5). In that case also the court found that there was an adequate remedy at law. In *Yarnell* v. *Hillsborough Packing Co.*, 70 F. 2d 435 (CCA 5), a suit to enjoin enforcement by the Florida Control Committee of its prorate orders under the Agricultural Adjustment Act, the court held that an injunction would not lie because the Control Committee had no power in any event to enforce its prorate orders—a situation markedly distinguished from that in the instant case where the local housing authority has the power to take appellants' property.

CONCLUSION

This appeal presents substantial questions warranting further argument before and full consideration by this Court.

Respectfully submitted,

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